



NEVADA STATE LAW ENFORCEMENT OFFICERS' ASSOCIATION

145 Panama St.
Henderson, Nevada 89015
702-813-7409
www.nevadaleo.org

June 19th, 2019

Personnel Commissioners

Re. A.R. 339

Nevada Department of Corrections (N.D.O.C.) Administrative Regulation (A.R.) 339 titled Employee Code of Ethics and Conduct, Corrective or Disciplinary Action, and Prohibitions and Penalties as currently revised is imperfect containing several inconsistencies with the Nevada Administrative Code (N.A.C.) and appears to be in direct conflict with provisions of the newly passed collective bargaining senate bill SB 135. As these issues have been adequately addressed by Attorney Adam Levine within his submitted written testimony, and AFSCME, I will collaborate these, my reaffirmation on these issues is redundant. I would like to draw your attention to a couple of other concerns with the N.D.O.C.'s hasty revision.

The words "Corrective or Disciplinary Action" are referenced within the title of A.R. 339 as inferred subject matter contained within, however tools such as Letters of Instructions (L.O.I.s) N.A.C. 284.480 a valuable corrective coaching and management tool utilized by The Division of Human Resource Management in HR-123 and several state agencies including the N.D.O.C. is notably absent within A.R. 339. If the N.D.O.C.'s objective is truly to assist in ensuring quality professional work and proper employee conduct from their employees rather than simply to penalize infractions, then the inclusion of a Letters of Instruction section is an essential component in the A.R. It is also notable that there are very few listed violations within the newly proposed A.R.339 charts in where the NDOC has determined that an oral or verbal sanction to correct an action or behavior would be considered an appropriate option.

On or around August 30th, 2017, The N.D.O.C. unsuccessfully attempted to incorporate two A.R.'s A.R. 340 titled Employee Complaint Reporting and Investigation and A.R. 341 titled Employee Misconduct and Performance Adjudication into A.R. 339. Administrative Regulation 339.08 (page 23 of 25), consisting of only two small condensed paragraphs is all that remains of A.R. 341's eight pages of detailed Adjudication regulations, procedures, evidentiary requirements, complete with specific criteria to categorize and define information obtained during the various inquiry, interview, and investigative phases of alleged misconduct that would assist the Adjudicator in the proper evaluation and categorization of the matter into one of four categories: Sustained, Not Sustained, Exonerated, or Unfounded. Due specifically to the absence of proper insight, guidance, direction, instruction, and training resources to the adjudicating supervisory staff, too many matters have resulted in several questionable and at times erroneous conclusions that have escalated into the costly expenditure of legal resources and money to the state and the employee to correct. Attempts to rectify this omission

utilizing the available employee input mechanism within the N.D.O.C. have failed to date. The omission of this vital component within A.R. 339 is an indication, further revision is necessary prior to the adoption of A.R. 339.

On behalf of myself, and my fellow NDOC employees, and the NSLEAO, I urge that the Adoption of A.R. 339 by the Personnel Commission be postponed until a properly revised version of AR 339 can be submitted for review and input from all interested parties.

Sincerely,


Jonathan R. Allen-Ricksecker

Nevada State Law Enforcement Officer's Association (NSLEOA)

EXHIBIT “1”

EXHIBIT “1”

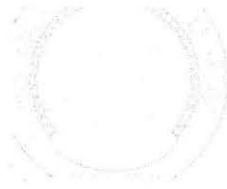
NAC 284.480 Letters of instruction: Authorized use as coaching or performance management tool; contents; discussion; retention in working file of supervisor. (065)

1. A letter of instruction is a document that is in written or electronic form and that:
 - (a) A supervisor of an employee may provide to the employee as a coaching or performance management tool to:
 - (1) Address the job performance or behavior of the employee; and
 - (2) Provide evidence of the job performance or behavior expected of the employee;
 - and
 - (b) Is not part of the formal disciplinary process.
2. A letter of instruction must include at least the following elements:
 - (a) A brief statement identifying the deficiency or area of concern in the job performance or behavior of the employee;
 - (b) An outline of the expectations of the supervisor of the employee relating to the job performance or behavior of the employee;
 - (c) Instructions or a recommended course of action for overcoming the deficiency or area of concern and a description of any additional training that will be provided to the employee; and
 - (d) A time frame for the completion of any recommended action items and for the proposed improvement in the job performance or behavior of the employee.
3. A letter of instruction must not include any reference to disciplinary action or consequences for failure to comply with the expectations of the supervisor of the employee relating to the job performance or behavior of the employee.
4. The supervisor of the employee and the employee must meet to discuss the expectations of the supervisor relating to the job performance or behavior of the employee outlined in the letter of instruction.
5. The supervisor of the employee shall retain a copy of the letter of instruction in the supervisor's working file for the employee. The supervisor must attach any written response by the employee to the letter of instruction. These documents must not be retained in the permanent personnel file of the employee unless they are attached to documentation of a subsequent disciplinary action taken against the employee as documentation of a nondisciplinary action that was taken before a specified disciplinary action was taken against the employee.

(Added to NAC by Personnel Comm'n by R098-17, eff. 6-26-2018)

EXHIBIT "2"

EXHIBIT "2"



State of Nevada
Department of Corrections

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ADMINISTRATIVE REGULATIONS: 300 SERIES

300 Series - Human Resources, EEO / Employee Development, Payroll	Effective Date	Last Review Date
AR 300 Recruitment and Hiring &	08/30/2017	
AR 301 -Shift Bidding - Temporary 12-28-18 &	12/28/2018	
AR 302 Meet and Confer Procedures &	08/30/2017	
AR 304 Equal Employment Opportunity &	05/15/2018	
AR 305 Sexual Harassment Prevention &	08/30/2017	
AR 306 Employee Formal Grievance Procedure &	08/30/2017	
AR 307 Furlough Policy &	09/06/2014	
AR 308 Department Staff and Applicant Records &	06/17/2012	
AR 310 Work Performance Standards &	09/16/2014	
AR 311 Performance Evaluations for Classified Employees &	09/16/2014	
AR 313 Dismissal of Probationary and Trial Period Employees &	09/16/2014	
AR 314 Employee Medical Examinations and Health Requirements &	06/17/2012	
AR 316 Employee Transfers &	05/16/2017	
AR 317 Employee Awards and Commendations &	08/30/2017	
AR 318 Employee Performance Cards &	08/13/2010	
AR 319 Workplace Safety &	08/30/2017	
AR 320 Salary Administration &	09/16/2014	
AR 321 Workplace Violence &	08/30/2017	
AR 322 Types of Leave and Leave Procedures &	05/15/2018	
AR 326 Posting of Shifts/Overtime &	09/16/2014	
AR 329 Employee Work-Related Illness/Injury or Occupational Disease &	09/16/2014	
AR 330 Employee Resignation and Reinstatement/Rehire &	08/30/2017	
AR 332 Employee Reporting Responsibilities &	09/16/2014	
AR 337 Staff Requirements for Home Address and Personal Telephone Number &	05/16/2017	
AR 338 Former Employees Access to Department Property &	09/16/2014	
AR 339 Employee Code of Ethics and Conduct, Corrective or Disciplinary Action, and Prohibitions and Penalties &	08/30/2017	
AR 340 Employee Complaint Reporting and Investigation has been incorporated into AR 339		
AR 341 Employee Misconduct and Performance Adjudication has been incorporated into AR 339		
AR 342 Employee Representation; Witness Compensation &	03/18/2014	
AR 343 Imposing Corrective/Disciplinary Action has been incorporated into AR 339		

300 Series - Human Resources, EEO / Employee Development, Payroll	Effective Date	Last Review Date
<u>AR 345 Unauthorized Relationships</u> &	10/15/2013	
<u>AR 346 Nepotism</u> &	03/07/2017	
<u>AR 347 Political Activities By Employees</u> &	06/17/2012	
<u>AR 348 Alcohol and Drug Testing Requirements - Commercial Driver's License</u> &	08/13/2010	
<u>AR 349 Employee/Applicant Alcohol and Drug Testing</u> &	08/30/2017	
<u>AR 350 Department Grooming and Dress Standards</u> & - TEMPORARY	08/02/2018	
<u>AR 352 Staff Identification Cards</u> &	08/30/2017	
<u>AR 355 Employee Secondary Employment</u> &	09/16/2014	
<u>AR 357 Summons and Complaint Service Process</u> &	08/30/2017	
<u>AR 358 Basic Peace Officer Certification</u> &	09/16/2014	
<u>AR 359 Employee Development Program Coordination and Supervision</u> &	06/17/2012	
<u>AR 360 Correctional Employee/Officer Basic Training Program</u> &	09/16/2014	
<u>AR 362 Weapons Training and Qualification</u> &	09/16/2014	
<u>AR 363 Honor Guard</u> &	06/17/2012	
<u>AR 364 Respiratory Protection Program</u> &	08/30/2017	
<u>AR 365 Respirable Crystalline Silica</u> &	03/07/2017	

EXHIBIT “3”

EXHIBIT “3”

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION**

339

**EMPLOYEE CODE OF ETHICS AND CONDUCT,
CORRECTIVE OR DISCIPLINARY ACTION, AND
PROHIBITIONS AND PENALTIES**

Supersedes: 08/13/10; 11/24/11 Temporary; 06/17/12 Temporary; incorporated AR 340 on 08/13/10; incorporated AR 341 08/13/10; and incorporated AR 343 on 12/17/13; AR 339 - 10/13/14 Temporary; 12/10/14 Temporary; 12/18/14 Temporary, 05/19/15 (Reverted back to last permanent AR with an effective date of 06/17/12); 01/14/16; 07/01/2017 (Temporary); 07/20/2017 (Temporary).

Effective date: 08/30/17

AUTHORITY

NRS 209.131, 209.239; NRS Chapters 284 & 289; NRS 281A.400; NAC 284.638-656; 284.548, 284.738 -771, 42 U.S.C. § 15601, *et seq.* and 28 C.F.R. Part 115.

PURPOSE

To establish a set of rules outlining the responsibilities of and proper practices for Nevada Department of Corrections (NDOC) employees. Additionally, serves to inform employees of the Department's expectations as well as penalties for failing to comply.

RESPONSIBILITY

The Director is the Appointing Authority for the Department with respect to internal administrative investigations and establishing Department regulations.

The Director/Designee has the ultimate authority for administering employee discipline.

Wardens/Administrators are responsible for enforcement of this Administrative Regulation (AR), utilizing the appropriate state forms. Additionally, each Warden and/or Division Head is primarily responsible for referring complaints or allegations for preliminary inquiry or internal administrative investigation.

The Department's Human Resources Division is responsible for providing each permanent classified employee with a copy of this AR and maintaining records of distribution to each permanent employee. The Human Resources Division is also responsible for tracking disciplinary actions and maintaining employee personnel files.

- J. Compromising the confidentiality of inmate affairs. **CLASS 3-5**
- K. Conducting unauthorized transactions with an inmate or an inmate's family. **CLASS 5**
- L. Transmitting prohibited messages to or for inmates. **CLASS 3-5**
- M. Identified self, displayed badge or identification, appeared in uniform, or made improper use of your status as a Department employee other than is necessary, whether on or off duty. **CLASS 2-5**
- N. Retaliated against another employee or an inmate for reporting a complaint of misconduct, to include sexual harassment or sexual abuse of an inmate, or retaliated against another employee or an inmate who cooperates with an official PREA investigation. **CLASS 4-5**
- O. Inciting another to fight. **CLASS 4**
- P. Unauthorized use, misuse, destruction or waste of property belonging to the State of Nevada, another employee, a citizen, or an inmate. **CLASS 1-5** (Such misconduct may subject the employee to financial liability for replacement of the property, whether attributable to negligence, lack of reasonable care, or failure to follow proper procedures.)
- Q. Displaying pornographic or adult pictures, movies, videos or text to inmates, employees or to persons outside of the Department while on paid status or on State property. **CLASS 5**
- R. Any conduct whether on or off duty which may negatively reflect upon the image of the State of Nevada or the Department of Corrections. **CLASS 1-5**
- S. Verbal threats or display of intimidating behavior towards a staff member. **CLASS 3**

339.08 ADJUDICATION

1. After the assigned investigator or supervisor completes the final case report, the Appointing Authority will adjudicate the matter within the time assigned, designating the final applicable Class of Offense Guidelines, using the appropriate form, and in coordination with the Office of the Inspector General.
2. The Appointing Authority shall prepare the Result of Adjudication Form, DOC-1096. Thereafter, the Appointing Authority should meet with the accused employee to advise the employee of the findings and recommendations.

339.09 IMPOSING CORRECTIVE or DISCIPLINARY ACTION

1. Employee performance issues should be addressed at the lowest appropriate level of supervision beginning with verbal counseling and through Specificity of Charges.

2. Corrective action includes a verbal or written counseling, which may be recorded on the performance card, as well as a Letter of Instruction or a Written Reprimand.

3. Before issuing corrective action, the Appointing Authority should make certain that no formal investigation related to the performance or misconduct issue is still pending. While performance issues or low-level misconduct will not usually be subject to a formal investigation, the impartial fact-finding process may determine that an issue appearing to be more serious at the outset does not require discipline.

4. Except for PREA-related matters, prior to an investigation, verbal or written counseling may be used to immediately correct safety or security issues. This counseling should include an acknowledgment that further investigation leading to discipline may follow in due course.

5. Verbal or written counseling and Letters of Instruction may be used to supplement the evaluation process, between regularly scheduled reports on performance.

6. An impartial fact-finding investigation is required before imposition of a suspension, demotion, or dismissal.

7. When a suspension, demotion or dismissal is warranted, a Specificity of Charges (NPD-41) should be drafted, utilizing the appropriate format located on the Stewart shared drive.

339.10 CONFIDENTIALITY OF PERSONNEL RECORDS

1. All documents assembled or produced in support of this regulation are confidential.

2. Files may be reviewed by a subject employee pursuant to applicable sections of NRS Chapters 284 and 289.

3. Files may be copied by a subject peace officer pursuant to applicable sections of NRS Chapter 289.

A. Once an appeal has been filed, a peace officer may request a copy of the investigative file, using the DOC-1066 form.

B. The DOC-1066 form is available on the shared drive and should be submitted to the Department's Human Resources Division.

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EXHIBIT “4”

EXHIBIT “4”

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
341**

**EMPLOYEE MISCONDUCT AND PERFORMANCE
ADJUDICATION**

Supersedes: AR 341 (Temporary, 10/25/09)
Effective date: 08/13/10 (Deactivated on 10/13/14; then Reactivated on 05/19/15)
AUTHORITY: NRS 199.325, 284.383, 284.385, NAC 284.638, 284.642, 284.646,
284.648, 284.670, 284.474, 284.478

RESPONSIBILITY

1. The Warden/Division Heads are responsible to review misconduct complaint investigations and adjudicate subordinate employee culpability and make recommendations for corrective or disciplinary action. Warden/Division Heads are further responsible to ensure compliance with this Administrative Regulation (AR).
2. The Training Manager is responsible to develop and deliver training on this AR.

341.01 ADJUDICATING COMPLAINTS

1. Adjudications are based upon a review of the completed misconduct investigation report and upon factual reasonable consideration of the evidence and statements presented in the investigation. Determining whether misconduct occurred precludes the consideration of mitigating factors.
 - A. If appropriate, mitigate the penalty, not the misconduct.
2. The Warden/Division Head should first, determine whether misconduct did in fact occur, and second, assess the appropriate corrective /disciplinary action recommendation. These are two distinctly different processes.
3. The first task is to decide whether misconduct occurred. A determination of culpability is based upon a standard of "Substantial Evidence."
 - A. A standard less than "Beyond a Reasonable Doubt" or "Preponderance."
 - B. "Substantial Evidence" is any evidence to cause a reasonable person to conclude the alleged activity occurred. The Department should demonstrate that any action is not arbitrary or capricious, but rather based on facts.

4. The Warden/Division Head should review each allegation individually and separately and arrive at a conclusion based upon the standard of "Substantial Evidence" for each allegation or issue investigated.

A. Traditionally, much emphasis has been placed on so-called independent witnesses. Wardens/Division Heads should understand that a lack of bias is but one element in assessing credibility.

B. Further, adjudications are not based upon a popular vote (five say it happened and one says it did not.) The relevant issue is credibility not quantity.

5. Adjudications should be based upon the totality of the evidence. It is the Warden/Division Head's responsibility to determine believability and credibility of witnesses.

6. The Warden/Division Head may consider anything that has a reasonable tendency to prove or disprove the truthfulness of testimony. Some factors to consider in making this determination may include:

A. The extent of the opportunity or ability of the witness to see or hear or otherwise become aware of the matter about which the witness provided statements.

B. The ability of the witness to remember or communicate information given in any statement.

C. The character or quality of the statement provided.

D. The demeanor and manner of the witness while providing the statement.

E. The existence or non-existence of any fact stated by the witness.

F. The attitude of the witness toward the investigation or toward giving a statement.

G. Prior consistent or inconsistent witness statements concerning the matter.

H. The character of a witness for honesty and truthfulness or the opposite. For example, patterns of conduct identified through documented work and misconduct histories or performance evaluations might be relevant in weighing employee credibility.

I. An admission by the witness of untruthfulness.

J. The existence or nonexistence of bias or motive.

K. The witness has a felony conviction.

7. The above enumerated factors should be considered collectively rather than as separate, unrelated factors

8. The Warden/Division Head should make a finding for each allegation and that finding should fall into one of the following categories:

A. **Sustained** – Investigation and evidence supports that the accused committed all or part of the alleged act.

B. **Not Sustained** – Investigation produced insufficient evidence or information to clearly prove or disprove the alleged act. This category is justified when there is a lack of witnesses or other objective and persuasive proof.

C. **Exonerated** – The conduct or act occurred but was justified, legal and proper.

D. **Unfounded** – The alleged act did not occur.

341.02 ASSESSING CORRECTIVE/DISCIPLINARY ACTION

1. In every instance of sustained allegations, the Warden/Division Head shall consult AR 339 for Class of Offense Guidelines and Chart of Corrective/Disciplinary Action to determine the appropriate Prohibition and Penalty for each Sustained allegation in order to arrive at the recommended Corrective/Disciplinary action.

2. Corrective/Disciplinary Action should be progressive, i.e., except in cases of serious violations of law or regulations, less severe measures are applied first, after which more severe measures are applied only if the previous measures have failed to correct the deficiencies.

3. Appropriateness of disciplinary action is determined by the severity of the offense and any past Corrective/Disciplinary Action for related offenses by the employee. In arriving at an appropriate recommendation, the Warden/Division Head should consider all factors relevant to the circumstances of the misconduct, including mitigating and aggravating factors. Those factors might include:

A. Motive – self interest vs. public interest.

B. Damage – degree of harm caused by the behavior, security violations.

C. Experience – the lack of it and the expectations for those who have it.

D. Intent – intentional contempt, malice or disregard of rules vs. momentary lapses or carelessness.

4. In cases involving more than one sustained violation:

A. Corrective/Disciplinary action can begin with the most serious violation. Other related violations may then be considered as aggravating circumstances when determining the appropriate penalty from within the minimum and maximum recommended range.

B. Or, each violation may be individually considered and the penalties cumulated.

5. The Warden/Division Head should consult with the Department Personnel Office regarding the affected employee's prior disciplinary history, and any documentation regarding past personnel actions imposed for like offenses.

6. Once the Warden/Division Head determines the recommended Corrective/Disciplinary Action, the Deputy Director shall be contacted and apprised of the recommendation.

A. Issues presented as aggravating or mitigating factors justifying variance from AR 339 guidelines should also be discussed with the Deputy Director.

7 Prior to proceeding, the Warden/Division Head must obtain concurrence from the Deputy Director for the Corrective/Disciplinary Action recommendation.

8 Following concurrence, the Warden/Division Head should prepare the Adjudication Report. The concurrence date should be included in the Adjudication Report.

341.03 ADJUDICATION REPORT

1. The Adjudication Report should be completed according to the format prescribed in this regulation. Reports submitted in other than the prescribed format will be returned to the concerned Warden/Division Head for corrections.

2. The Office of the Inspector General will assign a specific due date for completion of the Adjudication Report and any related documents (Specificity, Letter of Reprimand, etc.) The Warden/Division Head shall ensure compliance with that due date. In the event of a delay due to unusual or unforeseen circumstances, the involved Warden/Division Head should contact the Office of the Inspector General for an extension.

3. The Adjudication Report is completed in the standard Memo format using Times New Roman 12 pt. font. Pages should have a header (disabled on the first page) that includes on line 1 the title "Adjudication Report - IA-xxxx-xx" and on line 2 the page number. Margins should be 1", all around, for all pages. (See the attached "Adjudication Report Sample")

4. The Adjudication Report should be from the concerned Warden/Division Head, to the Inspector General.

5. The Adjudication Report is divided into seven sections, separated by the following headings: (See the attached "Adjudication Report Sample")

- A. ADJUDICATION
- B. ALLEGATION
- C. CLASSIFICATION
- D. RATIONALE
- E. CORRECTIVE ACTION/DISCIPLINARY RECOMMENDATION
- F. DEPUTY DIRECTOR CONCURRENCE
- G. EMPLOYEE NOTIFICATION

6. The **ADJUDICATION** section provides a short introduction with the following information from the investigation.

- A. Complainant fully identified
- B. IA number
- C. Number of allegations
- D. Number of employees accused
- E. Employees fully identified

7. The **ALLEGATION** section specifically identifies each allegation and should read exactly as it read in the investigation report, including the Allegation reference number. **(DO NOT RE-NUMBER THE ALLEGATIONS FOR THE ADJUDICATION REPORT.)** Each entire allegation should be **bolded** to make it stand out from other text. The first allegation follows immediately from the lead-in sentence on a new line. (See the attached "Adjudication Report Sample")

8. The **CLASSIFICATION** section follows each Allegation. A single line should follow the heading, recommending one of the following classifications: (See the attached "Adjudication Report Sample")

- A. Sustained
- B. Not Sustained
- C. Exonerated

D. Unfounded

9. The **RATIONALE** section follows each Classification section. The rationale should be a concise discussion which weighs the evidence (e.g. statements, witness credibility, physical evidence, test results, etc.) in support of the recommended classification. **(Personal opinions, comments, editorials on the merits of the case should not be included in the Rationale.)** Rationales should be based upon factual, reasonable consideration of the evidence and statements presented during the investigation. (See the attached "Adjudication Report Sample")

10. Each subsequent Allegation would follow, using the same format: Allegations in **bold**, then the Classification and Rationale sections following. (See the attached "Adjudication Report Sample")

11. If during the adjudication process, the Warden/Division Head identifies that the investigation supports misconduct as an included offense that is not formally addressed in one of the existing allegations, the Warden/Division Head may add a heading to the Adjudication Report, **MISCONDUCT NOT BASED ON ORIGINAL COMPLAINT**. When adding this heading, the Warden/Division Head shall formulate the appropriate allegation using "Prohibitions and Penalties" outlined in AR 339. A Classification and Rationale shall be prepared for the additional allegation following the guidelines above.

12. The **CORRECTIVE ACTION/DISCIPLINARY RECOMMENDATION**

This section should follow the last Rationale section of the last Allegation addressed. If there are no Sustained allegations, there will be no recommendation. For Sustained allegations, the Corrective Action/Disciplinary Recommendation section should include a discussion of each employee against whom a classification of Sustained was recommended. Include the following elements in the discussion:

A. Recommended penalty

B. Rationale for recommending the penalty, which should include a discussion of progressive discipline, the Class of Offense, Chart of Corrective/Disciplinary Guideline, the intent/motivation of each employee, the employee's experience, and appropriate prior Corrective/Disciplinary history.

13. The **DEPUTY DIRECTOR CONCURRENCE** section should include the name of the Deputy Director with whom the recommended Corrective Action/Disciplinary Recommendation was discussed, the date of the discussion, and the fact that the Deputy Director concurs with the recommendation. This step is necessary only on sustained allegations.

14. The **EMPLOYEE NOTIFICATION** section should include the date(s) the Warden/Division Head met with each accused employee concerning the adjudication of the complaint. The section should also include information that the employee was provided a

“Result of Adjudication Report”. The “Result of Adjudication Report” can be located on the Department shared drive.

15. In those instances where Adjudication results in a Sustained allegation and a Disciplinary action recommendation involving a Letter of Reprimand, the Warden/Division Head should prepare those documents and forward them with the Adjudication Report.

16. Imposition of any recommended Disciplinary action involving Specificity of Charges should occur only after appropriate final review by the Warden/Division Head and/or the Office of the Attorney General in compliance with the provisions of AR 343.

17. When using the Short Form Investigation Report, the Adjudication Report can be completed as part of the investigation report as outlined in the Office of the Inspector General’s Complaint Investigation Guide. (See Section 8, Complaint Investigations, A Guide for Investigators.)

341.04 EMPLOYEE MEETING

1. At the conclusion of the Adjudication process, the Warden/ Division Head should meet with all accused employee(s) and advise them of the findings and recommendations.

A. Ensure the employee understands this is only a recommended action, subject to Deputy Attorney General review.

2. During this meeting, the accused employee(s) should be given the “Result of Adjudication Report” (DOC-1096).

3. This meeting should not to be confused with any subsequent pre-disciplinary hearing and should not be used to question the employee or conduct further investigation. The purpose of this meeting is to apprise the employee(s) of the findings and recommendations only.

341.05 REPORTING AND ADJUDICATING EMPLOYEE PERFORMANCE ISSUES

1. Employee Performance issues should be addressed at the lowest appropriate level of supervision and adjudicated using progressive corrective or disciplinary action from Verbal Counseling through Specificity of Charges.

2. All actions should be properly documented using appropriate Department forms. (i.e. Performance Cards, Letter of Instruction, Letter of Reprimand, etc.)

341.06 NRS 289 – FILE REVIEW

1. For sustained allegations which will result in disciplinary action, employees may request copies of the Investigative file.
2. Requests to review or copy the Investigative file shall be submitted by utilizing form DOC-1066.
3. Requests should be forwarded to the Department Personnel Division.

APPLICABILITY

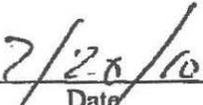
1. This regulation applies to investigations of all classified and unclassified Department employees.
2. This regulation does not require an audit.

REFERENCES:

ACA Standards 4-4048, 4-4050, 4-4051, 4-4052, 4-4058, 4-4061, 4-4062, 4-4063 and 2008 Supplement



Howard Skolnik, Director



Date

Jonathan Allen-Ricksecker - AR 341 Input

From: Jonathan Allen-Ricksecker
To: Cynthia Keller
Date: 12/9/2018 10:24 AM
Subject: AR 341 Input
Cc: 1CD Staff 11 26 2018; Aaron Dicus; Anthony Garcia; Antoine Norman; B...
Attachments: AR 341 Input Form 12 09 2018.doc; AR 339 - Code of Conduct - Final - 08302017.pdf; AR 341 - 081310 deactivated 05 19 15.pdf

I have attached an Administrative Input Form for AR 341 is currently inactive, so it is not up for a review. Due to the value of this particular AR I strongly feel that the AR and the subject matter contained within be re-evaluated. Thank you.

CONFIDENTIALITY STATEMENT: This electronic communication (including any attachments) is private or privileged, and may contain information that is privileged, confidential, and/or exempt from disclosure obligations under applicable law. This message is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient or agent responsible for delivering the information to the intended recipient, any unauthorized use or dissemination of this message in whole or in part is strictly prohibited. If you have received this transmission in error, please notify the senders by email, telephone, or facsimile immediately, and delete all copies from your system.

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Administrative Regulation Input Form DOC 049

Employee Name: Jonathan Allen-Rickssecker Title: Correctional Officer

Employee Facility: Hgh Desert State Prison Work Schedule: Wk #1 Sun-Wed 54:00 a.m. to 17:00 p.m.
WK #2 Sun -Tues 5:00 a.m. to 17:00 p.m (Sun until 13:00 p.m.)

Email: jallenricksecker@nv.doc.gov Phone Number: (702) 879-6667 (ext 6204)

Date: December 9th, 2018

Which AR are you recommending be changed? A.R. 341 Titled Employee Misconduct and Performance Adjudication (Temporary) (Inactive)

Which section(s) of the AR do you want to change? _____

Type of Action Requested:

- Question Only
 Notice of Proposed AR Change/Edit Request
 Expedited AR Review Staff/Inmate Safety

Identify which sections of the AR you want changed with the specific verbiage. Please write how you would like the specific AR verbiage to read (if more than one change, please number consecutively (i.e. 1. 2. 3. Etc.):

The Nevada Department of Corrections (N.D.O.C.) previously determined that Administrative Regulation (A.R.) A.R. 341 Titled *Employee Misconduct and Performance Adjudication (Temporary)* with an effective date of 10/25/09 was unnecessary, and had supposedly according to the N.D.O.C. web site (http://doc.nv.gov/About/Administrative_Regulations/Administrative_Regulations_300_Series/) contained within the Administrative Regulation series 300, "been incorporated into AR 339." In fact this is inaccurate. NDOC AR 339 titled *Employee Code of Ethics and Conduct, Corrective Or Disciplinary Action, And Prohibitions And Penalties* (website link above), section AR339.08 barely mentions the process in passing on page 23 of 25 pages. The section omits pertinent criteria involved in the employee Adjudication Process that assist both supervisory staff and subordinates in the authorities, applications, and understanding of how the employee disciplinary process is supposed to work, who the participants are, and what functions they fulfill, what standards of evident are required to assess employee culpability if any, i.e. "Substantial Evidence" versus a "Beyond a Reasonable Doubt" or "Preponderance", what were the four possible categorized outcomes, and which outcome they specific finding falls into, i.e. *Sustained, Not Sustained, Exonerated, or unfounded*, and the definitions relating to each. Section A.R. 341.02 titled *Assessing Corrective/Disciplinary Action* gives direction and guidance similar to that contained within A.R. 339, however A.R. 341 details additional necessary variables such as the appropriateness of the suggested action, specifically when applicable addressed mitigating and aggravating factors and circumstances relevant in fairly determining and sustaining an violation. A.R. 341 further describes the process and who is responsible for oversight and the concurrence from outside the department necessary to sustain a violation. A.R. 341 additionally details and explains the various sections of the Adjudication Report which incidentally still currently references AR 341 within the text. A.R. 341 gives guidance to the supervisor who drafts the document and clarification to the employee in greater detail as to how a Rationale was derived, and the evidence that justified the decision and action. Currently the Adjudication Report is completes using a less than comprehensive cut and paste method which states that the disposition of the Adjudication was based upon "sufficient evidence" regardless as to whether or not such articulable evidence did in fact exist, or an alternative category was more accurate based upon the

facts and evidence or lack thereof. This rubber stamp process is unjust, inconsistent, and undermined the integrity of the process and the original intent from the Personnel Commission of rendering a fair impartial decision based upon the totality of the facts and circumstances, not mere suspicion, or a lesser standard. I am suggesting that AR 341 be resurrected and remain a separate administrative regulation for the benefit of the department and staff. Thank you for the consideration.

Justification:

The resurrection of Administrative Regulation AR 341 is proper and just to assist staff in the application and understanding of the Adjudication Processes. Re-instating the AR will likewise assist in the proper categorization of facts that may lead if and when warranted to corrective and/or disciplinary action.

Notes:

See AR 339

See AR 341

http://doc.nv.gov/About/Administrative_Regulations/Administrative_Regulations_300_Series/